

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

RUBEN ALONZO BALMES, M.D.
4421 East Palo Verde Drive
Phoenix, Arizona 85018
Physician's and Surgeon's
Certificate No. C-41700

Respondent.

No. D-4590

OAH No. N-39320

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Medical Board of California as
its Decision in the above-entitled matter.

This Decision shall become effective on July 25, 1992.

IT IS SO ORDERED June 25, 1992.



THERESA L. CLAASSEN
Secretary/Treasurer
Division of Medical Quality

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In the Matter of the Accusation)	
Against:)	No. D-4590
)	
RUBEN ALONZO BALMES, M.D.)	OAH No. N-39320
4421 East Palo Verde Drive)	
Phoenix, Arizona 85018)	
Physician's and Surgeon's)	
Certificate No. C-41700)	
)	
)	
Respondent.)	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, on May 4, 5, 7 and 8, 1992 in San Francisco and on May 6, 1992 in Los Angeles, California.

Alfredo Terrazas, Deputy Attorney General, represented complainant.

Respondent Ruben Alonzo Balmes, M.D., was present and was represented by Mary Jo Hart, Attorney at Law, 425 California Street, Suite 2600, San Francisco, California 94104.

FINDINGS OF FACT

I

Official notice is taken that complainant Kenneth J. Wagstaff made the Accusation in his official capacity as the Executive Director of the Medical Board of California ("Board").

II

On December 17, 1984 the Board issued physician's and surgeon's certificate No. C41700 to Ruben Alonzo Balmes, M.D. ("respondent"). At all times relevant, that certificate was in full force and effect.

III

Respondent is 60 years old. He was born and educated in Mexico, receiving his medical education at the National Autonomous University in Mexico City. After a period of practice in Mexico, respondent came to California in 1960 where he attended night school to learn English while working as an orderly at a hospital in Pomona. Respondent then returned to Mexico where he undertook a general practice oriented towards pediatrics.

Returning to the United States after passing the ECFMG exam, respondent completed a rotating internship at Ohio Valley Hospital in Steubenville, Ohio in or about 1962. Undecided about his future, respondent applied for a psychiatric residency at Ohio State University and a surgical residency at Creighton University. He was accepted into both programs and opted for the surgical residency. After 21 months at Creighton, respondent decided to move to Cleveland, where he spent nine months as a house officer at Shaker Heights Hospital. Respondent then returned once more to Mexico, again establishing a general practice. In 1968, respondent was accepted into a psychiatric residency program at Oklahoma State University.

After completing his residency in or about 1971, respondent remained at Oklahoma State for about one year as an assistant professor as well as a staff psychiatrist at a VA hospital. Respondent then moved to Phoenix, where he spent about 10 years working in the county mental health system. Moving to California, respondent worked for approximately two and a half years at Atascadero State Hospital before becoming a staff psychiatrist at the California Medical Facility ("CMF") in Vacaville in or about 1986.

IV

On May 27, 1989 S.R.¹, an inmate at CMF who had recently been transferred from the California Correctional Institution in Tehachapi, came to see respondent complaining of sleep problems and fear he was going to be killed in prison. Respondent diagnosed "Major Depression," referred S.R. to psychology and prescribed for him Stelazine, Benadryl and Sinequan. Respondent saw S.R. sporadically until September 27, 1989, when he began to see S.R. on a weekly basis.

On November 7, 1989 S.R., at the suggestion of his custody officer, spoke to "Stoney" Williams, an officer in CMF's Security and Investigations ("S & I") unit about his concerns over respondent's actions during their therapy sessions. In particular, S.R. told Williams respondent had been groping his penis. On November 9, S.R. agreed to cooperate with S & I by

¹ In order to protect the patient/inmate's privacy, initials are used in this decision.

wearing a hidden tape recorder into his therapy sessions with respondent.

V

Between November 9 and December 14, 1989, S.R. was seen by respondent on at least eight occasions. During six of those visits S.R. wore the hidden tape recorder. It was established by clear and convincing evidence that during these visits respondent repeatedly fondled, masturbated and orally copulated S.R., gave written notes to S.R. with a sexual content, asked for and received nude photographs of S.R. and on three occasions asked for and received quantities of S.R.'s semen in the finger of a medical glove. These actions by respondent constitute sexual misconduct with a patient. Each of respondent's actions described above also constituted an extreme departure from the standard of medical and/or psychiatric practice. Respondent has, therefore, engaged in repeated acts of gross negligence.

VI

During the course of his treatment of S.R., respondent provided the inmate with unauthorized gifts in the form of money, cigarettes, candy, a book and one small bottle of whiskey. It is clear that respondent provided these items to S.R. as part of a plan to use S.R. to satisfy respondent's own sexual needs. In doing so, respondent acted dishonestly and with corruption in the performance of his duties as a staff psychiatrist at CMF.

VII

Respondent was arrested during S.R.'s final visit with him on December 14, 1989. He was subsequently charged with a felony violation of Penal Code section 4573 (bringing narcotics or alcohol into a state prison) and five misdemeanor counts of violating Penal Code section 647(b) (engaging in prostitution). All of these charges related to respondent's conduct with inmate S.R.

VIII

On June 29, 1990, in the Municipal Court of California, County of Solano, Northern Solano Judicial District, respondent was convicted, upon his plea of guilty, of one count of violating Penal Code section 647(b) (engaging in prostitution). Under the circumstances, it is found that respondent's conviction was of a crime substantially related to the qualifications, functions and duties of a physician and surgeon in that it evidences to a substantial degree a present or potential unfitness to perform the functions authorized by his certificate in a manner consistent with the public health, welfare and safety. It is further

found that respondent's crime evidences dishonesty and corruption.

IX

In January 1990, during the pendency of the criminal charges against him, respondent sought to enter the Physician's Diversion Program. As a result, respondent was referred to and entered a chemical dependency program at Rancho L'Abri Residential Treatment Center. Upon admission to Rancho L'Abri, a DSM-III-R Axis I diagnosis of "Alcohol dependence, continuing pattern" was made. At the time of his admission, respondent had been completely detoxified, having stopped drinking on December 30, 1989. At Rancho L'Abri respondent participated in group and individual therapy and attended Alcoholics Anonymous meetings.

Upon his discharge from Rancho L'Abri on March 16, 1990, it was recommended that respondent refrain from the use of all mind altering chemicals, continue in AA, attend outpatient therapy, move into a local recovery home for at least six months and continue with the Diversion Program. Respondent testified that after his discharge from Rancho L'Abri he attended 12 to 15 AA/NA meetings a week. He now attends five to seven such meetings a week as well as two meetings a week with his Diversion Program group. Respondent lives in an independent "sober living environment" with other recovering alcoholics and addicts.

X

While much was made at the hearing about respondent's alcoholism and recovery efforts, no effort was made to attribute respondent's conduct with inmate S.R. to that alcoholism. Nor was any evidence introduced to indicate that respondent was ever under the influence of alcohol while on duty at CMF. In fact, the psychiatrist who supervised respondent for two years and a psychologist and a registered nurse who worked with respondent during the last few months of his time at CMF, all of whom were called as witnesses by respondent, testified that they never saw any indication that respondent had a drinking problem.

Although respondent denies engaging in any sexual contact with S.R., he does concede his treatment of the inmate was not entirely appropriate. However, respondent attributes this not to alcoholism but to his own "co-dependency," which he describes as a practitioner's becoming too involved in trying to run the personal lives of patients.

While respondent maintains his co-dependency problem was addressed during his treatment at Rancho L'Abri, respondent's rather extensive records from that facility make no mention of this issue. In fact, respondent never disclosed to Rancho L'Abri staff that he had been accused of improper conduct with a patient. Instead, respondent told the staff at Rancho L'Abri he

had been discharged from his position at CMF because of his drinking and because he brought a bottle of alcohol into the prison. It appears that the issue of co-dependency was first interjected into this case by a psychiatrist called by respondent as an expert witness. That witness concluded respondent was "dependent and co-dependent," which led him to become an advocate for inmate S.R. and to undertake an "unusual" treatment strategy. Respondent's belated attempt to latch onto this co-dependency theory to explain at least some of his conduct with inmate S.R. is nothing more than a smokescreen which must be rejected.

XI

Although respondent admits he asked S.R. to bring him his semen, he maintains this was part of his treatment plan for the inmate and was not to further respondent's sexual interests. This treatment plan, respondent maintains, was driven by his co-dependency and led him "to go to any lengths to help [S.R.] not act out sexually." In this regard, respondent testified that S.R. attempted to masturbate in respondent's office and that respondent, not wanting to impose strict limits, told S.R. that he could not masturbate in the office but that if he wanted to do it somewhere else he could bring the semen to respondent. This, he felt, would allow S.R. to dissipate his sexual energy, would be relaxing for him and would facilitate their therapy sessions.

Respondent's explanation is wholly incredible. The evidence is overwhelming that respondent's request for S.R.'s semen was in furtherance of his own sexual desires and was completely unrelated to any treatment of S.R. Even if respondent's explanation were true, it would demonstrate a woeful lack of understanding of the appropriate limits of psychiatric treatment.

XII

Respondent testified that while at Rancho L'Abri he felt no guilt or shame over his activities at CMF. No evidence was presented to show that respondent's attitude has changed since that time. Respondent is simply unwilling to accept that he engaged in sexually inappropriate conduct with an inmate/patient and he continues to rationalize his behavior.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 726, 2234(a), 2234(b) and 2234(c) by reason of the matters set forth in Finding V.

II

Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 2234(e) by reason of the matters set forth in Finding VI.

III

Cause for disciplinary action against respondent exists pursuant to Business and Professions Code sections 490, 2236 and 2234(e) by reason of the matters set forth in Finding VIII.


IV

The matters set forth in Findings X, XI and XII demonstrate that respondent is not rehabilitated and that he is unable to perform the functions authorized by his physician's and surgeon's certificate in a manner consistent with the public health, safety and welfare.

ORDER

Physician's and surgeon's certificate No. C41700 issued to respondent Ruben Alonzo Balmes, M.D. is revoked pursuant to Determinations I, II and III, separately and for each of them.

Dated: May 19, 1992


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

MCC:wc

COPY

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
STATE OF CALIFORNIA

In the Matter of the Accusation)

Against:)

No. D-4590

RUBEN ALONZO BALMES, M.D.
4421 East Palo Verde Drive
Phoenix, Arizona 85018
Physician's and Surgeon's
Certificate No. C-41700

ACCUSATION

KENNETH J. WAGSTAFF, complainant herein, charges and
alleges as follows:

1. He is the Executive Director of the Medical Board
of California, State of California (hereinafter referred to as
the "Board") and he makes these charges and allegations in his
official capacity and not otherwise.

2. At all times material herein, respondent Ruben
Alonzo Balmes, M.D. (hereinafter referred to as "respondent"),
has held Physician's and Surgeon's Certificate No. C-41700 issued
by the Board. Said certificate was issued to respondent on or

//

1 about December 17, 1984 and is presently in good standing with an
2 expiration date of February 29, 1992.

3 BUSINESS AND PROFESSIONS CODE ^{1/}

4 3. Section 490 states, in pertinent part, that a
5 board may suspend or revoke a license on the ground that the
6 licensee has been convicted of a crime, if the crime is
7 substantially related to the qualifications, functions, or duties
8 of the business or profession for which the license was issued.
9 A conviction within the meaning of this section means a plea or
10 verdict of guilty or a conviction following a plea of nolo
11 contendere.

12 4. Section 726 of the code states that the commission
13 of any act of sexual abuse, misconduct, or relations with a
14 patient, client, or customer which is substantially related to
15 the qualifications, functions or duties of the occupation for
16 which a license was issued constitutes unprofessional conduct and
17 grounds for disciplinary action for any person licensed under
18 this Division. (Emphasis added).

19 5. Section 2001 of the Business and Professions Code
20 (hereinafter referred to as the "code") provides for the
21 existence of the Board.

22 6. Section 2003 of the code provides for the existence
23 of the Division of Medical Quality (hereinafter referred to as
24 the "Division") within the Board.

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26 //

27 1. All statutory references are to the Business and
Professions Code unless otherwise indicated.

1 7. Section 2004 of the code provides, inter alia, that
2 the Division is responsible for the administration and hearing of
3 disciplinary actions involving enforcement of the Medical
4 Practice Act (section 2000 et seq. of the code) and the carrying
5 out of disciplinary action appropriate to findings made by a
6 Medical Quality Review Committee, the Division, or an
7 Administrative Law Judge.

8 8. Section 2018 of the Business and Professions Code
9 authorizes the Division of Medical Quality to adopt regulations
10 as may be necessary to enable it to carry into effect the
11 provisions of law relating to the practice of medicine.

12 9. Section 2220 of the Business and Professions Code
13 provides that the Division of Medical Quality of the Board
14 (hereinafter "the Division") may take action against all persons
15 guilty of violating the provisions of the Medical Practice Act
16 (Business and Professions Code § 2000 et seq.).

17 10. Sections 2227 and 2234 provide, in part, that the
18 Board shall take disciplinary action against a licensee charged
19 with unprofessional conduct. Unprofessional conduct is defined
20 therein to include, but is not limited to, the following:

21 "(a) Violating or attempting to violate,
22 directly or indirectly, or assisting in or abetting the
23 violation of, or conspiring to violate, any provision
24 of this chapter.

25 "(b) Gross negligence.

26 "(c) Repeated * * * negligent acts.

27 //

1 "(e) The commission of any act involving
2 dishonesty or corruption which is substantially related
3 to the qualifications, functions, or duties of a
physician and surgeon." (Emphasis added).

4 11. Section 2236 provides, in pertinent part, that the
5 conviction of any offense substantially related to the
6 qualifications, functions, or duties of a physician and surgeon
7 constitutes unprofessional conduct. The Division of Medical
8 Quality may inquire into the circumstances surrounding the
9 commission of the crime to fix the degree of discipline or to
10 determine if the conviction is substantially related to the
11 qualifications, functions, or duties of a physician and surgeon.

12 REGULATIONS

13 12. Section 1360 of Title 16 of the California Code of
14 Regulations provides, in pertinent part, that:

15 "For the purposes of denial, suspension or
16 revocation of a license, certificate or permit pursuant
17 to Division 1.5 (commencing with section 475) of the
18 code, a crime or act shall be considered to be
19 substantially related to the qualifications, functions
20 or duties of a person holding a license, certificate or
21 permit under Chapter 5 of Division 2 of the code if to
a substantial degree it evidences present or potential
unfitness of a person holding a license, certificate or
permit to perform the functions authorized by the
license, certificate or permit in a manner consistent
with the public health, safety or welfare." (Emphasis
added).

22 CODE OF ETHICS

23 13. In 1980, the AMA adopted a 1980 revision of the AMA
24 Principles of Medical Ethics, which embodies basic principles of
25 conduct by the profession.

26 14. Section 1 of the American Medical Association's
27 Principles of Medical Ethics states as follows:

1 competent medical service with compassion and respect
2 for human dignity."

3 15. Section 2 of the American Medical Association's
4 Principles of Medical Ethics states as follows:

5 "A physician shall deal honestly with patients
6 and colleagues, and strive to expose those physicians
7 deficient in character or competence, or who engage in
8 fraud or deception."

9 16. Section 3 of the American Medical Association's
10 Principles of Medical Ethics states as follows:

11 "A physician shall respect the law and also
12 recognize a responsibility to seek changes in those
13 requirements which are contrary to the best interests
14 of the patient."

15 FIRST CAUSE FOR DISCIPLINARY ACTION

16 17. On or about December 14, 1989, while in the employ
17 of the California Medical Facility located in Vacaville,
18 California, respondent, who was employed at the time as a
19 physician psychiatrist, was arrested and charged with a felony
20 and five misdemeanor charges. The felony charge was a count of
21 violating Penal Code section 4573 (bringing narcotics or alcohol
22 into a state prison) and five separate counts of violating Penal
23 Code section 647(b) (engaging in prostitution).

24 18. The charges filed against the respondent mentioned
25 in paragraph 17 hereinabove, stem from the care and treatment
26 provided by respondent to patient inmate S.R.^{2/}, E-08359. Over
27 the course of approximately six sessions between respondent and

2. Initials are used in this Accusation to describe the
patient/inmate. A full name will be provided respondent and/or
his attorney upon receipt of a Request for Discovery.

1 patient/inmate S.R., respondent gave written notes to S.R. with a
2 sexual content, fondled, masturbated and orally copulated said
3 patient/inmate. Further, respondent asked for and received nude
4 pictures of patient/inmate S.R. and asked for and received
5 quantities of patient/inmate S.R.'s semen in a medical rubber
6 glove finger. The dates and therapy sessions over which these
7 incidents occurred were 11-09-89; 11-22-89; 11-30-89; 12-01-89;
8 12-07-89; and 12-14-89.

9 19. In caring and treating for patient/inmate S.R.
10 during said periods of time, respondent permitted the
11 physician/patient relationship to degenerate into a sexual
12 relationship. The aforesaid conduct constitutes sexual
13 misconduct and relations with the patient and is in violation of
14 section 726 of the Business and Professions Code and constitutes
15 cause for disciplinary action pursuant to section
16 2234(a) (violating the Medical Practice Act), and/or (b) (Gross
17 Negligence), and/or (c) (Repeated Negligent Acts) and/or (e)
18 (Dishonesty or Corruption).

19 20. The allegations of paragraphs 17, 18 and 19,
20 hereinabove, indicate that respondent, to a substantial degree
21 evidences present or potential unfitness to perform the functions
22 authorized by his license as a physician and surgeon in a manner
23 consistent with the public health, safety and welfare of the
24 consumer public of the State of California in violation of Title
25 16 of the California Code of Regulations section 1360. Further,
26 respondent has violated the American Medical Association's
27 Principles of Medical Ethics in that he failed to deal honestly

1 with his patient, inmate S.R., and chose instead to gratify his
2 own sexual needs. Respondent accomplished his goal of satisfying
3 his sexual cravings by providing patient/inmate S.R. with
4 unauthorized gifts in the form of money, cigarettes, candy and
5 one small bottle of an alcoholic beverage. This conduct by
6 respondent constitutes cause for discipline as it evidences
7 dishonesty and corruption in the practice of medicine in
8 violation of section 2234(e).

9 SECOND CAUSE FOR DISCIPLINARY ACTION

10 21. The allegations of the First Cause for
11 Disciplinary Action are hereby incorporated as if fully set forth
12 in these words.

13 22. As a result of the respondent's conduct, as set
14 forth in paragraphs 17, 18 19 and 20, respondent was convicted,
15 after a plea of guilty, on September 17,1990 of violating Penal
16 Code section 647 (b) (engaging in prostitution). This occurred
17 in the Municipal Court, Northern Solano Judicial District, County
18 of Solano, State of California, Case No. F 96602 PC in the case
19 entitled *People v. Ruben Alonzo Balmes*.


20 23. Respondent's conduct as set forth in paragraphs
21 17, 18, 19 and 20 has exposed his license to discipline pursuant
22 to section 2234(e) (Dishonesty or Corruption) and 2236
23 (Conviction of a Crime) and California Code of Regulations, Title
24 16, section 1360 in that his actions and the subsequent
25 conviction are substantially related to the qualifications,
26 functions, or duties of a physician and surgeon in that they
27 evidence a present or potential unfitness to perform the

1 functions authorized by his certificate in a manner consistent
2 with the public health, safety, or welfare.

3 PRAYER

4 WHEREFORE, complainant prays that the Board hold a
5 hearing on the charges and allegations set forth herein and
6 thereafter issue an order revoking or suspending respondent's
7 physician and surgeon certificate No. C-41700 and take such other
8 and further action as is deemed just and proper.

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10 Dated: September 3, 1991

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KENNETH J. WAGSTAFF
15 Executive Director
16 Medical Board of California
17 Division of Medical Quality
18 State of California
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